



December 8, 2020

By Electronic Mail

Thomas Carroll
Acting Director
Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 2201A
Washington, DC 20460

Re: December Update to Response to April 24, 2020 Letter from the U.S. Environmental Protection Agency

Dear Mr. Carroll:

Birla Carbon USA, Inc. (“Birla” or the “Company”) submits this letter as the seventh update to its May 22, 2020 response to the April 24, 2020 letter it received from the U.S. Environmental Protection Agency (“EPA” or the “Agency”) regarding force majeure notices the Company submitted on March 16 and 18, 2020 in anticipated noncompliance with obligations under the Consent Decree between the United States of America, the Louisiana Department of Environmental Quality (“LDEQ”), the Kansas Department of Health and Environment (“KDHE”), and Columbian Chemicals Company. Consent Decree, *United States et al. v. Columbian Chem. Co.*, No. 6:17-cv-01661-RGJ-CBW (W.D. La. June 11, 2018). In addition to providing updates since November 10, 2020, we also use this opportunity to attach supporting documentation for all updates we provided after June 22, 2020. *See* Confidential Attachments 1, 2, 4–9, 13–18, and 20; and Attachments 3 and 21. Due to their size, these attachments will be transmitted via sharefile.

Please note that this letter and certain documents that are being produced include confidential business information (“CBI”) and are marked as such. Documents marked for CBI are entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B, and are not subject to disclosure under the Freedom of

Information Act (“FOIA”), 5 U.S.C. § 552. We ask that LDEQ and KDHE similarly treat this as CBI under their analogous state laws.¹

I. North Bend

Since our last update, construction was ongoing at North Bend for installation of equipment required under the Consent Decree. *See* Confidential Attachment 10. As per the attached letter from Birla’s engineer of record, SNC-Lavalin Constructors Inc. (“SNC”), overall delays in meeting North Bend Consent Decree deadlines are still estimated at two to four months. *See* Confidential Attachment 12.

These delays are cumulative, beginning on March 22, 2020, when the governor of Louisiana issued a stay-at-home order. *See* Attachment B to Birla’s May 22, 2020 response to the April 24, 2020 letter. Although some restrictions on businesses were loosened by June 2020, the project engineering team was hampered with COVID-19-related delays from equipment vendors (*see* Confidential Attachments 2, 4, 6, 7, 9, and 20) and inefficiencies from teams working from home, including coordination issues with online meetings. The project team was told by the majority of its vendors that they would be encountering delivery delays, but could not quantify the delays in June 2020. *See* Confidential Attachment 1. In July and August 2020, the project team was provided clearer updated equipment delivery dates from the majority of its equipment vendors, improving the accuracy of the overall schedule. *See* Confidential Attachment 5. The Company, SNC, and various vendors worked aggressively to minimize delays to the extent possible. From September to November 2020, the project team received updated equipment delivery schedules, and adjusted the engineering schedules accordingly. *See* Confidential Attachments 8 and 10. Most significantly, on November 30, 2020, Birla’s seawater system vendor, [REDACTED] advised of delays related to delivery of its equipment. *See* Confidential Attachment 11. The postponed delivery of this equipment alone will result in a two- to four-month delay.

As part of the Company’s best efforts to keep the project on track and cure delays, the management team has been in continuous contact with contractors and subcontractors to identify opportunities to expedite the project. Towards that end, Birla’s project manager has been visiting the site in person, instead of remotely managing the project. The engineering and construction teams are working to adjust the project execution plan, identifying opportunities to reduce potential delays. These adjustments include but are not limited to:

- Moving the North Bend site Fall 2020 outage to December 2020;
 - Adding activities to the December 2020 outage that would increase construction efficiency during the 2021 construction period;
 - Adding tasks that were planned for the 2021 tie-in outage;
- Moving activities from the post-2021 tie-in outage to the Summer 2021 construction schedule;
- Compressing construction package schedules to the extent possible;
- Developing work packages to minimize construction time; and

¹ Certain attachments to this letter include CBI, which Birla has designated as such with the stamp “CONFIDENTIAL BUSINESS INFORMATION NOT SUBJECT TO DISCLOSURE UNDER FOIA.” Based on a review of relevant LDEQ regulations, La. Admin. Code tit. 33, pt. I, § 501(A), Birla understands that it must submit any CBI via mail or delivery to LDEQ and not electronically. At this time, Birla is providing the entire submittal to EPA and KDHE, and will separately submit the letter and its attachments to LDEQ.

- Developing packages to perform while maintaining COVID-19 safeguards.

Updates to the execution plan resulted in schedule acceleration of approximately 32 days. By eliminating construction activities during the 2020 – 2021 holidays, the overall project schedule was accelerated by approximately 18 days. The chart below shows the North Bend schedule progression and illustrates the results of the Company's efforts to keep the project on schedule.

| Activity | End of Month Schedule Update | | | | Number of Days Delayed | |
|-----------------------|------------------------------|-----------|-------------|---------------|------------------------|-----|
| | March 2020 | June 2020 | August 2020 | November 2020 | | |
| Equipment Delivery | | | | | | |
| | | 01/12/21 | 01/12/21 | 03/01/21 | 03/12/21 | 59 |
| | | 01/13/21 | 01/13/21 | 05/31/21 | 06/04/21 | 142 |
| | | 10/27/20 | 10/27/20 | 05/03/21 | 04/30/21 | 185 |
| | | 10/28/20 | 10/28/20 | 05/03/21 | 04/30/21 | 184 |
| | | 12/09/20 | 12/09/20 | 05/31/21 | 06/23/21 | 196 |
| | | 02/17/21 | 02/17/21 | 05/31/21 | 06/15/21 | 118 |
| | | 12/01/20 | 12/01/20 | 12/01/20 | 02/03/21 | 64 |
| | | | | 03/15/21 | 03/15/21 | 0 |
| | | 12/11/20 | 12/11/20 | 04/01/21 | 04/07/21 | 117 |
| | | | | 04/30/21 | 0 | |
| Construction | | | | | | |
| | | 10/05/20 | 12/03/20 | 01/04/21 | 12/16/20 | 72 |
| | | 11/30/20 | 01/28/21 | 03/31/21 | 04/02/21 | 123 |
| | | 02/23/21 | 08/09/21 | 08/09/21 | 06/30/21 | 127 |
| | | 05/10/21 | 08/25/21 | 08/25/21 | 08/13/21 | 95 |
| | | 05/03/21 | 09/15/21 | 09/01/21 | 08/17/21 | 106 |
| | | 05/17/21 | 09/01/21 | 09/01/21 | 08/20/21 | 95 |
| | | 08/09/21 | 08/09/21 | 10/29/21 | 10/29/21 | 81 |
| Startup/Commissioning | | | | | | |
| | | 10/01/21 | 01/11/22 | 01/11/22 | 11/22/21 | 52 |

II. Hickok

Construction is ongoing at Hickok for installation of equipment required under the Consent Decree. *See Confidential Attachment 19.* Birla received notice from its [REDACTED] manufacturer of reactor vent scrubbers, [REDACTED] that the equipment has been completed, is cleared to ship to Hickok, and is estimated to arrive by the end of January 2021. *See Confidential Attachment 20.* Birla has thus far received the following pieces of equipment, most of which was delayed.

| Equipment | Original Delivery Date | Actual Delivery Date | Days Delayed |
|------------|------------------------|----------------------|--------------|
| [REDACTED] | 4/10/20 | 5/26/20 | 46 |
| | 3/23/20 | 6/26/20 | 95 |

| Equipment | Original Delivery Date | Actual Delivery Date | Days Delayed |
|-----------|------------------------|----------------------|--------------|
| | 6/16/20 | 7/8/20 | 22 |
| | 6/16/20 | 7/8/20 | 22 |
| | | | |
| | 6/17/20 | 5/22/20 | -26 |
| | 5/22/20 | 6/19/20 | 28 |
| | 6/17/20 | 6/16/20 | -1 |
| | 5/4/20 | 7/10/20 | 67 |
| | 3/27/20 | 5/18/20 | 52 |
| | 4/17/20 | 5/4/20 | 17 |
| | 4/17/20 | 6/1/20 | 45 |

Another source of delays are the rising COVID-19 cases. As of December 3, 2020, the snapshot of COVID-19 cases around the Hickok facility was as follows:

- Population of Grant County, KS: approximately 7,500 people
- Positive COVID-19 tests in Grant County, KS: 766 (over 10%)
- Active COVID-19 cases in Grant County, KS: 99 (13 people out of every 1,000)
- COVID-19 cases at Hickok Plant: 6 positive cases and 2 individuals quarantined due to exposure (17% of workforce)

These numbers reflect the second highest rate of COVID-19 infection in Kansas.

Birla's Hickok Air Quality Control Upgrade Project was initially planned to achieve the Compliance Date of January 1, 2021. Due to COVID-19-related delays Birla is currently forecasting a target compliance date of February 17, 2021. The delay, and Birla's efforts to mitigate it by adding manpower and Sunday overtime, are documented in Confidential Attachment 19. As with North Bend, the management team has been in continuous contact with contractors and subcontractors at Hickok to identify opportunities to expedite the project, and Birla's project manager has been visiting the site in person.

The Company continues enforcing all COVID-19-related requirements at both project sites. Birla is working to ensure that all personnel, employees and contractors, are following all requirements. Failure to comply can result in being asked to leave the plant site or disciplinary action, up to termination.

We will update you with more details as they become available. Please contact David Buente at 202-255-8684 or dbuente@sidley.com if you have any questions in the meantime.

Sincerely,



Randy Waskul
Global Director, Health, Safety & Environmental

CC: Kellie Ortega, U.S. EPA (by email)
Patrick Foley, U.S. EPA (by email)
Chris Williams, U.S. EPA (by email)
Carlos Evans, U.S. EPA Region 6 (by email)
Emad Shahin, U.S. EPA Region 6 (by email)
Lisa Gotto, U.S. EPA Region 7 (by email)
Lisa Hanlon, U.S. EPA Region 7 (by email)
Amy Algoe-Eakin, U.S. EPA Region 7 (by email)
Alex Chen, U.S. EPA Region 7 (by email)
Thomas Mariani, U.S. DOJ (by email)
Eli Quinn, U.S. DOJ (by email)
Connie Ellis, KDHE (by email)
Kate Gleeson, KDHE (by email)
Dwana King, LDEQ (by FedEx)
Celena Cage, LDEQ (by FedEx)
David Buente, Sidley Austin LLP (by email)
Peter Whitfield, Sidley Austin LLP (by email)

Enclosures: Confidential Attachment 1 - 2020-06-22 - North Bend - Project Schedule
Confidential Attachment 2 - 2020-07-15 - North Bend - SNC Notice of Force Majeure
Event
Attachment 3 - 2020-08-12 - North Bend - SNC Notice of COVID-19 Stand-down
Confidential Attachment 4 - 2020-08-13 - North Bend - SNC Notice of Force Majeure
Event
Confidential Attachment 5 - 2020-08-24 - North Bend - Project Schedule
Confidential Attachment 6 - 2020-09-15 - North Bend - SNC Notice of Force Majeure
Event
Confidential Attachment 7 - 2020-10-07 - North Bend - SNC Notice of Force Majeure
Event
Confidential Attachment 8 - 2020-10-30 - North Bend - Project Update

Confidential Attachment 9 - 2020-11-09 - North Bend - SNC Notice of Force Majeure Event

Confidential Attachment 10 - 2020-11-24 - North Bend - Project Schedule

Confidential Attachment 11 - 2020-11-30 - North Bend - Notice from Seawater System Vendor

Confidential Attachment 12 - 2020-12-01 - North Bend - SNC Notice of Force Majeure Event

Confidential Attachment 13 - 2020-07-10 - Hickok - Worley Project Update

Confidential Attachment 14 - 2020-07-24 - Hickok - Worley Project Update

Confidential Attachment 15 - 2020-08-21 - Hickok - Worley Project Update

Confidential Attachment 16 - 2020-09-25 - Hickok - Construction Schedule

Confidential Attachment 17 - 2020-10-23 - Hickok - Worley Project Update

Confidential Attachment 18 - 2020-10-29 - Hickok - Worley Project Schedule

Confidential Attachment 19 - 2020-12-02 - Hickok - COVID-19 Impact Schedule Analysis

Confidential Attachment 20 - 2020-07-10 - Hickok - Notice from Vent Scrubbers Manufacturer

Attachment 21 - 2020-07-12 - Hickok - District Pune Order